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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,941	07/11/2003	Thomas J. Gretz	1633(Arl)	3975

30010 7590 10/05/2004

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EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,941

Applicant(s)

GRETZ, THOMAS J.

Examiner

Kofi A. Schultersbrandt

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-17 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received. .

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 061404.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This first Office Action is in response to Applicant's originally filed Application received in the Office on July 11, 2003.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 14, 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 14, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Behringer (1,472,955). Behringer teaches each feature of the claimed invention as shown in the marked-up copy of Behringer's Figures 1-4 in the Office Action of June 11, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behringer (1,472,955). Behringer teaches, substantially, each feature of the claimed invention. Regarding claim 5, Behringer teaches a holding member extending at about 90 degrees from the first holding member. Behringer does not specifically teach extending at exactly a 90 degree angle. It would, however have been obvious to one of ordinary skill in the art at the time of invention to have modified Behringer's holding member to extend at various angles at about 90 degrees including 90 as a number of angles would work equivalently in Behringer's invention. Regarding claim 7, Behringer does not teach a cable holder with between 260 and 280 degrees of arc. It would have however been obvious to one of ordinary skill in the art at the time of invention to have modified the curvature of Behinger's holding member to have additional arc including 260 degrees.in order to more securely accommodate a pipe or cable by securing the pipe or cable more along the top of the pipe or cable with the modified extension. Regarding claim 6, Behringer teaches a deformable member extending approximately at a 90 degree angle form a first holding member, but does exactly teach that the angle of extension is exactly 90 degrees. It would, however have been obvious to one of ordinary skill in the art at the time of invention to have modified Behringer's deformable member to extend exactly 90 degrees from Behringer's holding member as a number of extension angles around 90 degrees including 90 degrees would work satisfactorily and equivalently.

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behringer (1,472,955), in view of Del Re et al. (6,325,338). Behringer teaches,

substantially, each feature of the claimed invention as discussed above. Behringer does not specifically teach a deformable member extending from the first holding member at between 155 and 165 degrees. Del Re et al., however, teaches an arcuate cable holder having 260 to 280 degrees of arc and a deformable member extending from the first holding member at between 155 and 165 degrees. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Behringer's holding member to extend to various degrees of arc including to 280 degrees in order to more securely hold the cable on the upper side as taught by Del Re et al. It would further have been obvious to have modified Behringer's cable holder to extend with a greater amount of arc as discussed above so that the deformable member extends from the first holding member at between 155 and 165 in order to more completely encircle the cable to be held.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behringer (1,472,955), in view of Del Re et al. (6,325,338) and Rubenstein et al. (U.S. 2003/0222185 A1). Behringer and Del Re et al., in combination, teach substantially each feature of the claimed invention as discussed above including construction from metal (See crosshatch). The references combined do not teach steel material or the claimed sheet thickness. Rubenstein et al., in cable hanger art teaches a steel cable hanger. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Behringer's invention to be made of steel in order to make the support strong. Furthermore, it would have been obvious to one of ordinary skill in the art to have modified Behinger's sheet thickness up to and including the

claimed steel sheet thickness depending on the weight of the weight of the pipe of cable to be hung. In other words, it would be obvious to make the sheets thick, and thus stronger, as necessary to accommodate the cable of pipe load.

Allowable Subject Matter

Claims 16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-22 are allowed over the prior art of reference.

Reasons for Indicating Allowable Matter

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 20, the prior art of record does not teach, in combination with the other features of claim 20, providing a slot in the first holding member, inserting a screw driver or similar leverage tool into the slot and bending the first holding member until the deformable member secures the cable against the base. Regarding claim 21, the prior art of record does not teach, in combination with the other features of claim 21, a tab extending from one side of the v-shaped end. Regarding claim 22 the prior art of record does not teach in combination with the other features of claim 22, the claimed holding member sets extending from a first side of the base and four of said sets extending from a second side of the base.

Examiner's Response to Applicant's Remarks

Claims 5 and 6 have been rejected under new grounds. Applicant's remaining arguments filed on July 2, 2004 have been fully considered but they are not persuasive.

Regarding claim 1, the Applicant has not addressed the examiners interpretation of the reference. For example, the examiner provided and referred to marked-up drawings in the June 11, 2004 Office Action describing where the deformable member is located in Behringer. However, Applicant argues that Behringer's (11) is the deformable member. Behringer's (11) is a deformable member but not the deformable member chosen by the examiner. The Examiner's chosen deformable member clearly meets claim 1. Applicant should consider that the language "a deformable member that can be deformed" is extremely broad and could read on any member that could be deformed regardless of whether the text of the reference explicitly so teaches.

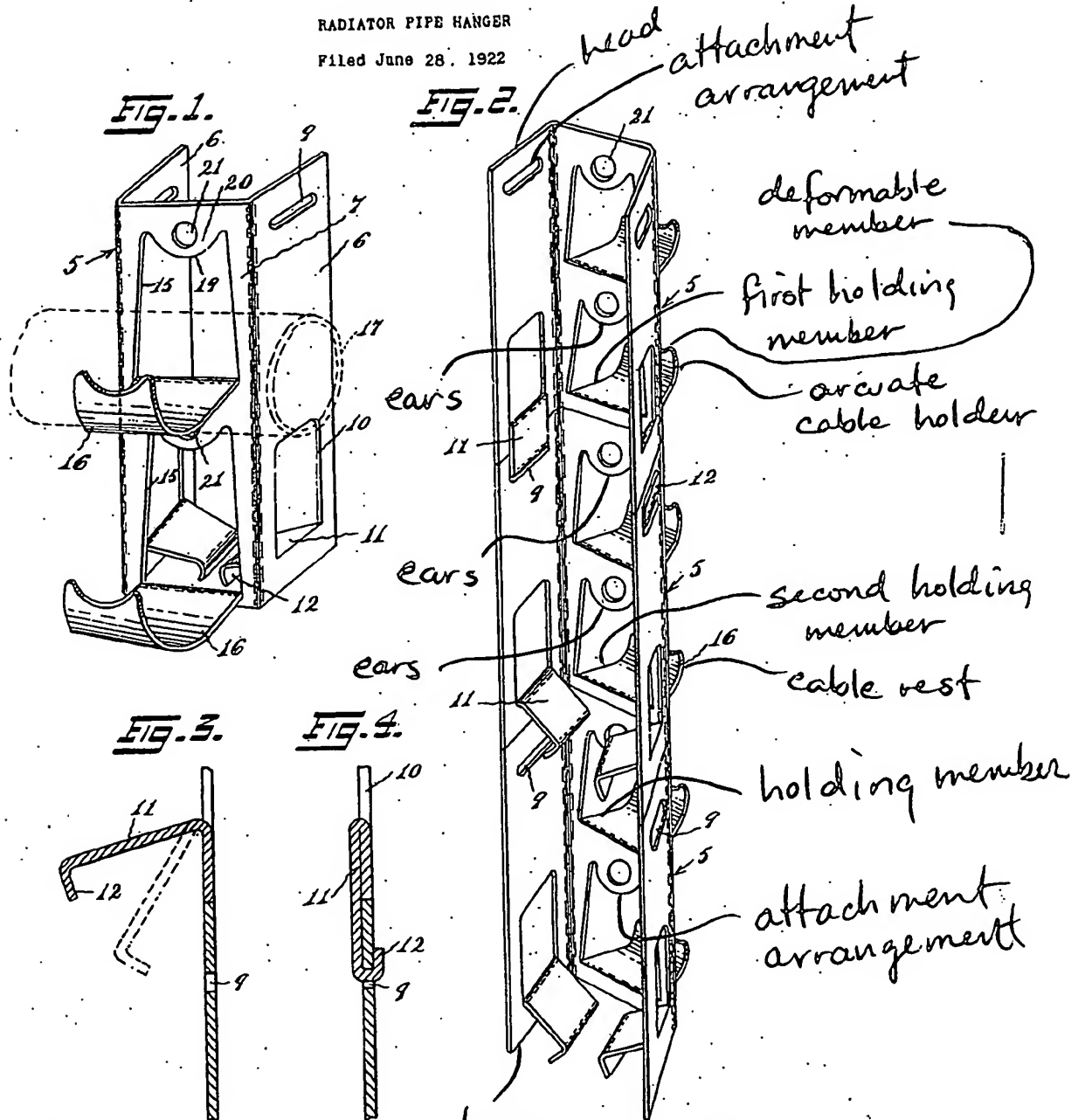
Applicant further argues that Behringer does not teach a second holding member. Again, applicant relies heavily on Behringer's text and does not address the examiner's reference interpretation to determine where Behringer's first and second holding members are located. In fact, even from a glance at the drawings, it is clear that element (16) of Figure 1 is a holder because it holds a cable. There are clearly numerous element (16)s. Regardless of what Behringer calls them in the text, each element 16, holds a cable and can be reasonably interpreted as a holder. Behringer, therefore, teaches at least a first and a second holder (16).

CLAIM 4

Nov. 6, 1923.

E. BEHRINGER
RADIATOR PIPE HANGER
Filed June 28, 1922

1,472,955



Witnesses:
H. D. Penner

Inventor:
Emil Behringer,
By his Att'y, F. H. Richards.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kofi Schulterbrandt
September 28, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER